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IN THE

Supreme Court of the United States

October Term, 1963

No. 305

ANA DEL VALLE, ET ALS,

Petitioners,

vs.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-CIO AND MARCEL A. KENNEY, TRUSTEE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Petitioners Brief in Case 6133[1]

[1] Appendix F was printed for the Court below and included with the instant Petition under separate cover.

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IN THE

Supreme Court of the United States

October Term, 1963

No. .....

ANA DEL VALLE, ET ALS,

Petitioners,

vs.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-CIO AND MARCEL A. KENNEY, TRUSTEE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioners, Ana del Valle *et als,*[1] pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit entered in the above entitled case on March 6, 1964. Petition for rehearing and clarification of judgment was filed on April 21, 1964 and denied on April 29, 1964.

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[1] The original petition in this action before the United States District Court for the District of Puerto Rico, Case No. 106-63, was instituted by 155 members of the Hotel and Restaurant Employees and Bartenders International Union, Local 610, affiliated to the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO. The names of said Petitioners appear in Appendix C, *infra*, p. 28.

Citations to Opinion Below

The order of the District Court for the District of Puerto Rico is unreported and is printed in Appendix B hereto, *infra*, pp. 18-19. The opinion and judgment of the Circuit Court of Appeals for the First Circuit is printed in Appendix B hereto, *infra*, pp. 21-27.

Jurisdiction

The judgment of the Circuit Court of Appeals for the First Circuit was entered on March 6, 1964, Appendix B hereto, *infra*, p. 25. Rehearing was denied on April 29, 1964, Appendix B hereto, *infra*, p. 26.

The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254(1) and 28 U. S. C. 2101(c).

Questions Presented

I. May a party, an International Union, challenge through a procedure other than that provided under Section 402(h) of the Labor Management Reporting and Disclosure Act, hereinafter referred to as the Act, the validity of an election held by one of its locals, Section 402 being the exclusive means available under the Act to challenge and election, as is provided in Section 403 of the Act?

II. May a Circuit Court of Appeals entertain an appeal from an order of a federal district court, when the controversy is moot and clearly not a case and controversy within the meaning of the Constitution of the United States of America, Article III, Section 2?

III. May a party be allowed to seek judicial relief from an order of election issued by a federal district court when said party acquiesced to all the terms of the order appealed from, including having abided to the results of the election, and delivered the administration of the affairs of the local union to the elected Board of Directors?

IV. Is the appointment of a Monitor to direct and supervise elections of union officers, one of the remedies available under Title III of the Labor Management Reporting and Disclosure Act?

V. May a court of appeals exert jurisdiction regarding an admittedly interlocutory non-final order of a federal district court?

Statutes Involved

The statutory provisions involved are Sections 402 and 403 of the Labor Management Reporting and Diselosure Act, printed in Appendix A, *infra*, pp. 15-17.

Statement

Petitioners are members of the Hotel and Restaurant Employees and Bartenders International Union, Local 610, affiliated to the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, hereinafter referred to as Local 610. Respondents are the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, hereinafter referred to as the International and Mr. Marcel A. Kenney, a Vice President of the *International* and appointed Trustee of Local 610 since March 1, 1963 hereinafter referred to as Trustee.

On March 14, 1963, Petitioners filed a Petition before the United States District Court for the District of Puerto Rico, Civil Case No. 63-106, alleging violation by respondents of certain provisions of the Labor Management Reporting and Disclosure Act, 29 U. S. C. 401, *et seq.*, Petitioners alleged, among other things, that ever since February of 1961, the International through the establishment and imposition of a trusteeship has kept Local 610 under trusteeship for a continuous and uninterrupted period of time in excess of eighteen months in violation of Section 302 and 304 of the Act, and in violation of the Constitution of the International.[2] That the trusteeship so established has deprived Local 610 of all local autonomy and is maintained even though the conditions set forth in Section 302 of the Act have not been met; that the appointment of Marcel A. Kenney as Trustee on March 1, 1963 demonstrates the intention of the International to continue exercising control over Local 610.

Petitioners further alleged that no intra union remedies are available and that all the above has caused them irreparable injury, having been precluded from bargaining collectively through representation of their own choosing, by having no access to the administration and internal affairs of their Union; continuity of the trusteeship has caused such dissention and schism within Local 610, that the hotel workers may be forced to work without the benefit of a collective bargaining agreement, and danger of dissolution if forced to continue operating under such trusteeship.[3]

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[2] The trustees who have continuously acted since February of 1961 are: Floyd Loew, February of 1961; Manuel Parrón, June 1961; John Dennis, November 1961; Marcel A. Kenney, March 1, 1963, R., p. 3a.

[3] Local 610 was certified as bargaining representative for over two thousand employees in the Metropolitan Hotel Association by the National Labor Relations Board, 24-RC-1909 on February 18, 1963, R., p. 40a.

Petitioners sought the issuance of a temporary restraining order enjoining respondents from continuing the exercise of the trusteeship upon Local 610 and instructing respondents to cease the trusteeship, such order to be effective immediately; the appointment of a monitor to receive all assets of Local 610 and to administer control and to manage all the affairs of Local 610 until an election of a Board of Directors is held by its membership of Local 610 and that respondent Marcel A. Kenney, as Trustee of the International be ordered to deliver all assets of Local 610 to the monitor within a period of time to be set by the Court and relief against respondents establishing any other trusteeship of any kind or any other type of control, administration, direction of, or interference with the affairs of Local 610 for a reasonable period, in any event not less than one year after the monitor delivers all the assets of Local 610 to the Board of Directors duly elected, as well as a request for payment out of the general treasury of respondent union of all expenses incurred as a result of the order sought.

On the 21st day of March of 1963, a hearing was held before the District Court on the basis of an Order to Show Cause issued against respondents.[4] Respondents however, stated in open court that "in view of the fact that the membership of Local 610 has expressed an almost universal desire that the trusteeship be terminated, the general president [of the International] is dispensing with the necessity of a union hearing to determine that question and as of March 19, 1963, has ordered the trustee to proceed to the immediate termination of the trusteeship in accordance with the procedures of the International Constitution and the requirements of the Landrum Griffin Act";[5] that the

[4] No return was filed by Respondents, R., p. 10a.

[5] R., p. 11(a).

above "makes it [the case] moot" [6] and that they had requested the "Commissioner of the Bureau of Management Reports to supervise and conduct this election in so far as it is permitted to do so under Landrum Griffin":[7] That "Mr. Kenney nor I nor anybody has any objection to Mr. Frank advising or directing Mr. Kenney just what he should do and we hope that Mr. Frank and some other agency of the Federal or State Government will actually conduct the election. Mr. Kenney does not have the men power to hand out ballots and see that it is conducted properly. But if we are not successful in obtaining Mr. Frank actually to conduct the election, we will ask the Department of Labor of Puerto Rico to supply people to do that." [7a]

On March 22, 1963, the Federal District Court entered an order designating a monitor, Mr. Adolfo Collazo.[8]

> ". . . to conduct and supervise the election of the officers and the Board of Directors of the Union who are to take over its affairs upon the termination of the present trusteeship and to supervise, further the complete cessation of the trusteeship immediately upon the election and installation of the said officers and Board of Directors . . . Upon the said monitor's report that the officers and the trusteeship has completely ceased, the action shall be ordered dismissed. . ." [9]

On April 11, 1963, the International filed notice of appeal before the District Court regarding the said order issued on March 22, 1963.

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[6] R., p. 12(a).

[7] R., p. 12(a).

[7a] R., p. 18(a).

[8] Mr. Adolfo Collazo is an arbitrator of the Department of Labor of the Commonwealth of Puerto Rico, who was designated as Monitor by the Court.

[9] Appendix B, *infra*, p. 18.

On June 3, 1963, the monitor filed before the District Court a "Report on the Conduct and Supervision of the Election of Officers of Unión de Trabajadores de la Industria Gastronómica de Puerto Rico, Local 610, de la Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, San Juan, Puerto Rico, and Installation of the Elected Officers According to Procedures Established by the Monitor".[10]

The Monitor's report discloses that the International not only acquiesced to the proceedings and procedure established by the monitor, but it actually actively participated in the elections: information was submitted by the International, rulings were discussed with it, it submitted lists, the trustee was present at the nominations meetings and during the elections held on May 26, 1963, and after the installation ceremony, Mr. Kenney turned over to the elected officers the bank account and other documents to the Union.

At no time did the International object to the election and to the contrary, the International voluntarily terminated the trusteeship and turned over the property to Local 610.[11]

A hearing before the Honorable Judges of the Circuit Court of Appeals was held on February 1st, 1964, and judgment was issued on March 6, 1964, vacating "that portion of the order of the District Court appointing a minitor and directing an election . . . " [11a]

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[10] Appendix D, *infra*, p. 31.

[11] The International could have objected to the conduct of the elections or could have refused to turn over to Local 610 assets and documents of the local. The International also could have refused to comply with the Order. Instead, it complied with the Order. It complied with and acquiesced to all the proceedings while at the same time proceeded to appeal from the Order of the Court.

[11a] Appendix B, *infra*, p. 25.

A Petition for rehearing and clarification of judgment was filed by Petitioners *wherein*,[12] among other issues the question of mootness of the case was again posed. Such Petition for Rehearing was denied on April 29, 1964. It is from this judgment that Petitioners seek review before this Court.

Reason for Granting the Writ

1. The decision of the Court below in the instant case, Appendix B, p. 22, is directly in conflict with decisions of other Circuit Courts of Appeals, namely: *Mamula* v. *United Steel Workers*, 304 F. 2d 108 (CA 3, 1962) *cert denied*, 371 U. S. 823; *Colpo* v. *Highway Truck Drivers and Helpers, Local 107*, 201 F. Supp. 307 (D. C., Del. 1961) vacated as moot 305 F. 2d 362 (CA 3, 1962), *cert. denied*, 371 U. S. 890 (1962);[13] and in *Robins* v. *Rarback*, 325 F. 2d 929 (CA 2, 1963).

The above cited cases hold that Section 402 of the Act, providing remedy through the Secretary of Labor when elections *have already been held*, is an exclusive source of jurisdiction and federal courts have no way of acting except upon application through the Secretary of Labor. This view has been followed by several Courts.[14] Said decisions are in direct conflict with the decision in the instant case

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[12] R., p. 39a.

[13] In the *Colpo* case, the federal district court upheld said doctrine. The Court of Appeals did not pass on the question and the decision below was vacated on the basis of mootness.

[14] *Shranko* v. *Hod Carriers*, 51 L. R. R. M. 2458 (N. Y. Sup. Ct, 1962); *Goldberg* v. *Trico Workers Union*, 53 L. R. R. M. 2875 (1963); *Sanders* v. *Local 559, Carpenters*, 54 L. R. R. M. 2234 (U. S. D. C., Ky., 1963); *Jackson* v. *Marine Engineers*, 231 F. Supp. 347 (U. S. D. C., N. Y., 1963); *Grasso* v. *Phillips*, 49 L. R. R. M. 2007 (U. S. D. C., N. Y., 1961).

and the decision issued by the Seventh Circuit in *Beckman* v. *Local 46, Iron Workers*, 314 F. 2d 848 (CA 7, 1963) where redress provided in Section 402 of the Act, by way of appeal to the Secretary of Labor, is considered not to be an exclusive remedy.

The Court of Appeals in the instant case, by "vacating that portion of the order [of the District Court] directing an election", has in effect assumed jurisdiction to declare void and null an election *already conducted*. This by itself is in direct conflict with the decision of the Third Circuit in the *Mamula* case, *supra*, and which is followed by the great majority of cases, holding that the federal courts have jurisdiction to entertain this type of suit, *only* upon application of the Secretary of Labor and not *motu propio*, and that the procedure provided for in Section 402 is exclusive.

The instant decision is also in direct contravention with Section 403 of the Act, which specifically prohibits exactly what the Court of Appeals in the instant case has done: ". . . The remedy provided by this title for challenging an election *already conducted* shall be exclusive." (Emphasis supplied.)

> "The power of the courts with respect to union election is hedged about with procedural safeguards . . ."
> *Robins* v. *Rarback*, 325 F. 2d 929, (CA 2, 1963).[15]

The instant case typifies one of the many critical situations which can be created, directly affecting the stability of the labor movement, which indicates the urgent necessity for the settlement by this Court of the disputed question here involved.

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[15] *McKeon* v. *Local 107, I. B. T.*, 223 F. Supp. 341 (1963) holding that 402 is not an exclusive source of jurisdiction.

The absurdity of the situation created is apparent from the record, where respondents, in open Court accepted and even suggested the conduct of an election under the supervision of an agency of the federal or state government,[16] as in effect it was held under the supervision of a Mr. Adolfo Collazo, arbitrator of the Department of Labor of the Commonwealth of Puerto Rico, Appendix D, p. 31, and although respondents participated and cooperated in the holding of the election, and in effect acquiesced to the procedure of election, they appealed the order of the federal district court, under which they acted. The Court of Appeals, in vacating said order, has held that it has jurisdiction to declare void and null an election held, in contravention of the procedure established by Section 402 of the Act, said section being the only post election remedy available. The Court of Appeals has thus done, what respondents could not have done themselves.

For the aforestated reasons, and in view also of the following discussion, petitioners submit that the decision of the Court of Appeals is erroneous and that the contrary conflicting decisions cited are correct.

For instance, if the decision herein challenged is allowed to prevail, it could conceivably be argued, that its effect would be that *Local 610* would have been without a Board of Directors, and without a governing body ever since May 27, 1963[17] date on which the trusteeship formally ceased.

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[16] R., p. 12a, 18a, 25a.

[17] Petitioners respectfully submit that this Honorable Court take judicial notice of Case 175-64 before the United States District Court for the District of Puerto Rico. Due to the importance of this case, corollary to the instant one, Petitioners have reproduced the documents in said case in Appendix E, *infra*, p. 42. The Federal District Court interpreted the Circuit Court of Appeals decision in the instant case as having left Local 610 without a governing body which is the same as saying that such Local is inexistent by judicial fiat.

See also Order of May 18, 1964, in Case 106-63, the instant case below, Appendix B, *infra*, p. 20.

The direct interference by federal courts with post election challenge of the results of an election of a Board of Directors of a local union was certainly not envisaged by Congress in the enactment of Section 402 and 403, Title IV of the Act.

In effect, Congress was preoccupied with this problem and expressly excluded from this area the exercise of federal jurisdiction until a complaint before the Secretary of Labor is filed.

The reversal of an order of election after an election has been duly held necessarily amounts to undue interference by the Court with the results of an election. Unless the decisions of the Circuit Court of Appeals has no meaning, which would not be reasonable to assume, the legal situation is as expressed in the Order of the United States District Court of Puerto Rico, in Case 175-64, Appendix E *infra*, p. 48, to the effect that since May 27, 1963, Local 610 has been operating without a Board of Directors, that is, in a vacuum,[18] thus leaving over 2,000 employees without the representation of their own choosing. Congress never contemplated such an anomalous and absurd situation.

2. Clearly the question presented is of the utmost importance in the administration of the Labor Management Reporting and Disclosure Act and a final decision by this Court on this issue is plainly in the public interest, since it is likely to affect the administration of the Act, in a field which Congress considered of the utmost importance,[19] that

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[18] Petitioners herein have consistently assumed that such is not the effect of the order, mainly in view of the refusal of the Court of Appeals to clarify its judgment. If Petitioners are unsuccessful in this action the result would be a complete negation of all remedies under existent statutes.

[19] This problem is aggravated by the alleged overlap of Titles I and IV, the decisions turning on elusive fact situations.

is Union Democracy, and the Protection of the Rights of Members.

3. On this same day, Petitioners herein have requested leave from this Honorable Court to file a "Memorandum on Mootness" with a detailed analysis and supporting documents therein.

The issue of mootness was raised by Petitioners' Brief, Appendix F, p. 3, before the Court of Appeals, reiterated in open court and in the Petition for Rehearing and Clarification of Judgment. It appears from the record that respondents participated in all the stages of the elections held, voluntarily terminated the trusteeship, delivered the administration of the Union to the elected members and recognized the Board of Directors as such: *Colpo* v. *Highway Truck Drivers, supra,* p. 8: "Our position is limited to cases and controversies involving real and substantial rights of the parties. We think once the election here was held, there was no longer before this court a subject matter upon which our judgment could operate. . . and the question became moot. Our opinion thus would be advisory and of no immediate consequence to the parties." Citing *Mills* v. *Green,* 159 U. S. 651 (1895).

Was the appointment of a Monitor the Appropriate Relief?

Petitioners alleged in the original petition the circumstances which required and justified the appointment of a Monitor, Respondents filed no return to the show cause order, R., p. 10a. Thus, although not an automatic relief, the peculiar situation present in this case involving the illegality of the trusteeship involved and the willingness of respondents to terminate it, all were sufficient in law to grant the remedy sought.

If the illegal trusteeship is terminated after more than two years of existence, it is clear that somebody, other than the Trustee, who according to his attorney was universally repudiated[20] had to be appointed to conduct the election. In fact, it was suggested by respondents themselves, that an agency of the federal or state governments be entrusted to conduct the elections.[21] Furthermore, Section 306 of the Act, 29 U. S. C. 466, specifically provides that "the rights and remedies provided by this title shall be in addition to any and all other rights and remedies at law or equity". Should a party be allowed to attack its own acts, once it appears that it was not the means to accomplish the end sought?

Furthermore, the order appointing the Monitor was eminently interlocutory in character, to which no appeal lies, and it constitutes an abuse of judicial power by the Court below to entertain an appeal under those circumstances.

The Court of Appeals had no jurisdiction to entertain the instant proceedings: the Notice of Appeal itself, filed by Respondents is to the effect that they were appealing "from the *interlocutory order* entered by the District Court on March 22, 1963". The Court itself, had to read that in "substantial effect there is an injunction here" and relied on *Ettelson* v. *Metropolitan Life Insurance Company*, 317 U. S. 188 (1942).

Such assumption of jurisdiction on the part of the Court of Appeals is erroneous, and beyond the authority conferred on it by Congress. The Court was so aware when it stated "Therefore, while we caution counsel in other cases not to take this one broadly, . . ."

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[20] R., p. 11a.

[21] R., p. 18a.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Statutes:

29 U.S.C. 482 (Labor Management Reporting and Disclosure Act):

"*Section 402.* (a) A member of a labor organization—

(1) Who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) Who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of Section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim, the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this Title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary

in accordance with the provisions of this Title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed Section 401, or

(2) that the violation of Section 401 may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of Section 401, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal."

Appendix A

29 U.S.C. Section 483:

Section 403

No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF PUERTO RICO

Civil No. 106-63

ANA DEL VALLE, ET ALS,

Petitioners,

v.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-CIO AND MARCEL A. KENNEY,

Respondents.

Order

That Mr. Adolfo Collazo be as he is hereby designated monitor pursuant to the provisions of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401, et seq. and that his authority be limited to conduct and supervise the election of the officers and the Board of Directors of the Union who are to take over its affairs upon the termination of the present trusteeship and to supervise further, the complete cessation of the trusteeship, immediately upon the election and installation of the said officers and the Board of Directors.

Upon the said monitor's report that the officers and Board of Directors have been elected and installed and that the trusteeship has completely ceased, the action shall be ordered dismissed.

Appendix B

This order is entered despite the fact that respondents have objected to it for the following reasons: (1) The order is beyond the scope of the show cause order entered by the Court and beyond the relief requested by the complainant; (2) The Court does not have jurisdiction or authority to order the appointment of a monitor under the provisions of the law upon which the complaint was filed and for such other reasons as were raised in open court.

San Juan, Puerto Rico, this 22th day of March of 1963.

(Signed) CLEMENTE RUIZ-NAZARIO
United States District Court Judge

Appendix B

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF PUERTO RICO

[SAME TITLE]

Order

Petitioners having moved for a stay of execution of, or any proceedings to enforce the judgment entered by the Court of Appeals for the First Circuit, as to the above entitled cause, in Civil Case No. 6133, pending the filing of a petition for a Writ of Certiorari in the Supreme Court of the United States, it is hereby

ORDERED that execution of or any proceedings to enforce the said judgment be and the same hereby are stayed until the filing of a petition for Writ of Certiorari in the Supreme Court of the United States and disposition of the same by that Court.

San Juan, Puerto Rico, this 18th day of May, 1964.

CLEMENTE RUIZ-NAZARIO
United States District Judge

Appendix B

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 6133.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-CIO, ET AL.,

Respondents-Appellants,

v.

ANA DEL VALLE ET AL.,

Petitioners-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

Before WOODBURY, *Chief Judge*, and MARIS* and ALDRICH, *Circuit Judges*

Jonas B. Katz, with whom *Brown & Gettler* was on brief, for appellants.

Ginoris Vizcarra, with whom *Sarah Torres Peralta*, *Federico Rodriquez Pagan* and *Torres Peralta & Vizcarra* were on brief, for appellees.

Appendix B

Opinion of the Court

March 6, 1964,

ALDRICH, *Circuit Judge.* The Puerto Rico local of the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, found itself in the trusteeship of its International Union. The eighteen months presumptive period, section 304 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §464(c), having expired, certain members of the local brought a petition in the district court against both unions praying for dissolution of the trusteeship. Petitioners requested substantial interim relief, including the appointment of a monitor and the ordering of an election, under his supervision, of new directors of the local. Following a hearing on an order to show cause the district court denied all other interim relief, but appointed a monitor with authority to conduct "the election of the officers and the Board of Directors of the union who are to take over its affairs upon the termination of the present trusteeship . . . ." The monitor was further to "supervise . . . the complete cessation of the trusteeship immediately upon the election and installation of the said officers and Board of Directors."

Respondents did not object to the order insofar as it involved the cessation of the trusteeship (in fact they so stipulated), but they did complain of and now appeal from, the court's assumption of authority to appoint a monitor and thus supervise the election.

Appellees raise, at the outset, the question of our jurisdiction. Appellants state that jurisdiction is based upon

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* Sitting by designation.

28 U.S.C. §1292 (a)(1), asserting that the court's order in effect constituted the granting of an injunction. Their position is that implicit in the order appointing a monitor to supervise "the" election was an implied directive that there be no election not so supervised.

While we believe that implied injunctions are not readily to be found it is nevertheless difficult not to envisage appellants' interpretation of the district court's order as the practical one, or to think that any responsible union would have believed itself free to adopt a contrary course. Therefore, while we caution counsel in other cases not to take this one broadly, we do think that in "substantial effect" (*Ettelson* v. *Metropolitan Life Ins. Co.*, 1942, 317 U.S. 188, 192) there was an injunction here.

Turning to the merits, appellees assert that the district court has equitable powers,[1] and that such include the appointment of a monitor. While monitorships may be an acceptable equitable device, see Monitors: A New Equitable Remedy? 70 Yale L. J. 103 (1960), the record discloses no special reasons for invoking that relief here. Indeed, none are even alleged. The court seems to have proceeded on the basis that the burden was upon respondents to show the contrary. We cannot infer from a statute containing no such affirmative provisions that the appointment of a monitor to supervise an election in connection with the dissolution of a trusteeship is automatic.[2] The fact that petitioners had statutory authorization to bring

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[1] "The rights and remedies provided by this subchapter shall be in addition to any and all other rights and remedies at law or in equity." 29 U.S.C. §466.

[2] The statutory scheme would appear to be the reverse. *Cf.* 29 U.S.C. §§482, 483.

a suit for termination of the trusteeship (we are persuaded by Judge Watkins' excellent analysis in *Executive Board, Local Union No. 28, I.B.E.W.* v. *I.B.E.W.*, D.C. Md., 1960, 184 F. Supp. 649) does not go to the merits of the relief.

Judgment will be entered vacating that portion of the court's order appointing a monitor and directing an election. Final judgment to be entered in accordance with this opinion.

Appendix B

Judgment

[SAME TITLE]

March 6, 1964.

This cause came on to be heard on appeal from the United States District Court for the District of Puerto Rico, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: That portion of the order of the District Court appointing a monitor and directing an election is vacated; further proceedings not inconsistent with the opinion filed today.

By the Court: ROGER A. STINCHFIELD,
Clerk.

By: /s/ DANA H. GALLUP,
Chief Deputy Clerk.

Appendix B

Order of Court

[SAME TITLE]

April 29, 1964.

It is ordered that the petition for rehearing and clarification of judgment filed April 21, 1964, be, and the same hereby is, denied.

By the Court:

/s/ ROGER A. STINCHFIELD,
Clerk.

Appendix B

Order of Court

[SAME TITLE]

May 4, 1964.

Upon consideration of appellees' motion dated April 30, 1964,

It is ordered that said motion be, and the same hereby is, denied, without prejudice.

By the Court:

/s/ ROGER A. STINCHFIELD,
Clerk.

[cc: Mr. Katz and Miss Vizcarra.]

APPENDIX C

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF PUERTO RICO

Civil No.: 63-106

ANA DEL VALLE, and others,

Petitioners,

vs.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-CIO and MARCEL A. KENNY, Trustee,

Respondents.

APPENDIX "A"

1. Pablo Padrón
2. William Valladares
3. Guillermo Candelaria
4. Heriberto González
5. José González Díaz Piña
6. Nicasio Martes
7. Emilio González
8. Antonio Rivera
9. Enrique Alicea
10. Domingo Torres
11. Jesús Barreiro
12. Agustín Rivera
13. Martín González Heredia
14. José Luis Abad France
15. Antonio Romero
16. Andrés Rodríguez Rodríguez
17. Luis Molina
18. Ana del Valle
19. Emilio Rivera
20. Santiago Cuadrado
21. Clarisa Piñeiro
22. Juan Orozco
23. Jose Rivera
24. Luis E. Sotomayor
25. Emiliano Ruiz
26. Nazario Carrasquillo
27. Antonio Ramos

Appendix C

29. Manuel Avilés
30. Abraham Melendez
31. Nazario Rivera
32. Francisco Nazario
33. Hector Sotomayor
34. Dionisio Reyes
35. José Mercado
36. Angel M. Ramos
37. Santiago Cruz
38. Angel Ramón Orta
39. Sixto Acosta
40. Miguel Angel Ramos
41. Pedro Rodríguez
42. Ignacio González
43. Juan Ramírez Roldán
44. Santo Rodríguez Padilla
45. Ramón Camacho
46. Jesús Cruz Ortiz
47. Emilio Rivera
48. Benigno Huertas
49. Fortuno Vega
50. Rafael Rivera
51. M. Villanueva
52. Eliseo Cosme
53. José A. Pérez
54. Alejo Cruz
55. Félix Sánchez
56. Jesús M. García
57. Carmelo Rodríguez
58. Anibal García
59. Rafael Ortiz, Jr.
60. Anibal Quiñones
61. Carlos Rosario
62. Alberto Torres
63. Rosa Montes
64. Rafael Rivera
65. Milagros Amalbert
66. Miguel Cabán
67. Luis A. Martinez
68. Juan Matos
69. Juan Ortiz
70. Arastemio Ortiz
71. Rufino González
72. Gabriel Santos
73. Maximino Gomez
74. Julio B. Calderón López
75. Antonio Miranda
76. Miguel A. González
77. Felipe Ortega
78. Nicolás Torres
79. Alejandro Viera
80. Santos Muñez
81. José Morales Colón
82. José Quiñones Rivera
83. William Rivera
84. Luis Carrasquillo
85. Emil Llenza
86. Roque Santiago
87. Angel Luis Garcia
88. Ernesto Falcón
89. Luis A. Benítez
90. Rafael Viera
91. Carmelo Cosme
92. Alfredo Morales

Appendix C

93. Felo Salgado
94. Manuel Rosa
95. Luis Soler
96. Antonio Colón
97. Monico Díaz
98. Juan Rodríguez
99. Cleofe Fonseca
100. Agustín Rivera
101. Avelino Rodríguez
102. Justino Delgado
103. Justino Delgado
104. Nieves Brito
105. Juan José Rivera
106. Enrique Rodríguez
107. Ambrosio Morales
108. Carmelo Hernández
109. Epifanio Rivera
110. Rafael Rodríguez
111. Sigfredo Pacheco
112. Ezequiel Monge
113. Fausto Amaro
114. José Montañez
115. Tomás Crespo
116. Wilfredo Santos
117. Luis Rosario
118. Cristóbal Pérez
119. Leslie Ramos
120. Ramón Rosa
121. Reyes Suárez
122. Luis Antonio Collazo
123. Luis Morales
124. Alberto Silva
125. Anastacio Flores
126. Miguel González
127. Enrique Piñeiro
128. Aurelio Moyet
129. José A. Morales
130. Daniel Santos
131. Antonio Colón
133. Gabriel Calderón
134. Carmen M. Aponte
135. Ventura Figueroa
136. Carmen L. Hernández
137. Octavio Cortés
138. Manuel Negroni
139. Felix Rodríguez
140. Juan V. Peña
141. Agustín González
142. Pedro Carrión
143. Antonio Vega
144. Gilberto Cintrón
145. Euripedes Nieves
146. José R. Torres
147. Francisco Santiago
148. Miguel Martínez
149. Antonio Rivera
150. Andrés Santiago
151. Pedro Juan Belén
152. Ramos Delgado
153. Vicente Rosado
154. Juan R. Delgado
155. Evaristo de León

APPENDIX D

Civil No. 63-106

Report on the Conduction and Supervision of the Election of Officers of Unión de Trabajadores de la Industria Gastronómica, Local 610, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, San Juan, Puerto Rico, and Installations of the Elected Officers; According to Procedures Established by the Monitor.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF PUERTO RICO

Civil No. 63-106

ANA DEL VALLE, and Others,

Petitioners,

VS.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-CIO, and MARCEL A. KENNEY,

Respondents.

Report on the Conduction and Supervision of the Election of Officers of Unión de Trabajadores de la Industria Gastronómica, Local 610, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, San Juan, Puerto Rico, and Installations of the Elected Officers, According to Procedures Established by the Monitor.

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ORDER OF COURT

The District Court of the United States for the District of Puerto Rico entered an Order on March 22, 1963—Civil No. 63-106— . . .

According to the Order of the Court appointing the undersigned as Monitor in charge of the conduction and supervision of the elections of officers of Unión de Trabajadores de la Industria Gastronómica, Local 610—Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, an extensive analysis of the Constitution and by-laws of said Union was made to determine the provisions listed in same which might be applicable to the proposed election.

• • • • •

According to the information submitted by Mr. Marcel A. Kenney, Trustee, at the time the Monitor was designated, there was only a group of 435 members paying dues to the Union. In view of that, the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, as well as the Trustee, Mr. Marcel A. Kenney, adopted the position through their legal advisors, that only the above mentioned group of 435 members were eligible as bonefide members of the Union to participate in the Nominations and Elections of Officers.

To substantiate this point of view, *the International forwarded to the Monitor, the following letter:*

> "On April 2, 1963 I forwarded to you a copy of the official order of the General President of the International Union terminating the trusteeship of Local 610, which order was dated March 19, 1963. In that order of the General President the eligibility to participate in nominations and elections and to be a candidate for

office was established as membership in good standing as of March 31, 1963, and on the date of nominations and elections. The requirement of "good standing" was in accordance with Article X, Section 11 of the Constitution of the Hotel & Restaurant Employees and Bartenders International Union, and the provisions of the Labor Management Reporting and Disclosure Act of 1959, both of which require that only members in good standing participate in elections.

"We have been advised this date, however, that it is your intention as court-appointed Monitor to conduct an election among all employees of the hotels of the Metropolitan Hotel Association as of July 1962, irrespective of whether or not these employees are members in good standing of Local 610 as defined by Article XII, Section 6 of the Constitution of the Hotel & Restaurant Employees and Bartenders International Union.

"We wish to advise that your action in establishing eligibility requirements, especially ones inconsistent with the provisions of the International Constitution governing Local 610, is beyond your authority as court appointed Monitor and was not contemplated by the order of the District Court. You are further advised that such action is in direct violation of the following sections of the Labor Management Reporting and Disclosure Act of 1959: *Section 401 (b), Section 401 (e), Section 403.*"

"Signed JONAS B. KATZ, Attorney and Counselor at Law
1505 Fountain Square Building
Cincinnati 2, Ohio".

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When the Monitor was appointed, he confronted with the following situation in the Metropolitan Hotels Association of Puerto Rico, Inc.: There was a substantial number of members—more than 1000—whose dues were deducted, regularly, until July 28, 1962, the expiration date of the collective bargaining agreement. Furthermore, upon the expiration of said collective bargaining agreement, and, previously, as a result of a schism within Local 610, when the Teamsters Trustee was appointed by the International Union, in or about 1962, the members of Local 610 at the Metropolitan Hotels Association of Puerto Rico, Inc., involuntarily discontinued the paying of dues to the Union. All these facts convinced the Monitor that something had to be done in order to prevent that the rights of these members of Local 610 might be affected. Therefore, after giving due consideration to these facts, and in the light of the powers conferred by the Court to this Monitor, the Monitor established a ruling he considered the most reasonable, practical, and realistic measure to be uniformingly applied. This ruling stated:

> "... that Local 610, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, consider members in good standing, eligible to nominate, to be nominated, and to vote in the election of officers to be conducted and supervised by this Monitor, all those members working at the Metropolitan Hotels Association of Puerto Rico, Inc., and in other establishments who fulfilled the requirements for membership in their respective organizations prior to July 28, 1962, who, involuntarily failed to pay the Union dues after July 28, 1962, and who neither have voluntarily withdrawn from membership. Said members shall be

included in the list of members in good standing and treated as having the same rights of members who have paid the Union dues up to March 31, 1963, for the purpose of participating in the coming elections as members in good standing".

The ruling, as established, *was discussed by the Monitor with Mr. Marcel A. Kenney, the Trustee.* (Copies of the ruling were served to the Court and to the parties concerned.)

In order to establish the eligibility of all concerned, a thorough study of the membership of the Unión de Trabajadores de la Industria Gastronómica, Local 610, in connection with the payment of dues and the collective bargaining agreements with the hotels, was made. *A list of the members bonafide up to July 28, 1962, was obtained from the Hotels involved. A list of the members of the Union pertaining to other establishments was also obtained from the Trustee.* In *addition, the Trustee submitted* to the Monitor a list of the members who paid directly to the Union, and who were in good standing by March 31, 1963.

After establishing all necessary measures and considering all adequate safeguards to insure a fair and legal election, the Monitor proceeded to hold a meeting on May 19, 1963, at 3:00 P.M., in the Sixto Escobar Park, Muñoz Rivera Avenue, Puerta de Tierra, P. R., for the Nomination of Candidates for the Executive Board of Local 610. Of course, prior to that, a printed Notice of Nominations, Elections and Installations of Officers was sent on April 29 and 30 by mail, to all the members in good standing with the Union, according to the list of eligible members obtained by the Monitor from the Union and the Employers. (Copy of the Notice was submitted to the Court.) . . .

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NOMINATIONS

The convention for the Nomination of Candidates for Office was held in the place, hour, and date already mentioned in the Notice. *The Trustee, Marcel A. Kenney, was present.*

The Monitor explained, to the members who attended, the procedure to be followed in the Nominations; their rights; those entitled to nominate, to be nominated, and to vote; the method to be used to identify the persons intervening in the Nominations. This was made possible by the use of the official lists of membership obtained from the Hotels, the Trustee, and Union cards. A record of the meeting for the Nominations was taken by a stenographer reporter. (Exhibit No. 2.)

MEETING WITH CANDIDATES

During the Nomination Convention the Monitor invited the nominated candidates to meet with him in his office at 2:00 P.M., Monday, May 2, 1963. . . .

In the meeting, to which the Trustee assisted, . . .

ELECTIONS

Elections were held in the place, hour and date informed in the printed Notice sent by mail to each one of the members in good standing of Local 610. *Mr. Kenney was present during these elections.* Some of the observers of the candidates were present at the elections. In all the procedures held, the Monitor received the cooperation by the observers who were present, and also by Mr. Oscar Lausell Ramos, Mr. Salvador Vázquez Vargas, Mr. Arturo Hernández Rodríguez, and Mr. Vicente Cancela, Mediators of the Bureau of Conciliation and Arbitration.

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The voting place was opened at 8:00 A.M. and closed at 7:00 P.M.

Two teams of observers and mediators, supervised by the undersigned, began, at 7:15 P.M., the counting of ballots which had been folded and deposited in the ballot box by the voters.

Four polling booths (casetas) were used.

Copy of the official ballot, in white, and sample, in yellow, are attached—Exhibits Nos. 4 and 5. The yellow samples were distributed prior to the elections among the candidates who asked for them, and also were posted in all the bulletin-boards of the different departments of the hotels concerned and in the bulletin-boards of the Union quarters.

Notice of Elections were posted too in the above mentioned places. (Exhibit No. 6.)

IDENTIFICATION OF VOTERS

The identification of voters was carried on in the following ways: . . .

Immediately after knowing the result of the elections, copies of the form attached were given to persons interested.

The following candidates were elected:

OFFICERS ELECTED

PRESIDENT: Leopoldo Ramos Ducós
VICE PRESIDENT: Jorge Bartolomei
SECRETARY-TREASURER: Ana del Valle
RECORD SECRETARY: Domingo Torres
MARSHALL: Enrique Rosado

Appendix D

MEMBERS OF THE EXECUTIVE BOARD:

Félix Acevedo	Vidal Gerena
Enrique Caraballo	David González
Alberto Figueroa	Luis Nolina Rosado
José L. Garay	Gilberto Natal

Ana Iris Torres.

INSTALLATION OF OFFICERS

On May 27, 1963, at 2:00 P.M., in Santiago Iglesias' Hall, of the P. R. Department of Labor, the Monitor proceeded to install the candidates elected. In this occasion the Monitor announced the names of all the candidates elected and served a written official certificate to each candidate elected. (Exhibit No. 8.)

The ceremony of Installation properly was carried in the following way:

All the candidates assured the Monitor that they cheerfully and willingly accepted the offices for which they have been elected. Then, raising their right hand, they repeated, after the undersigned, the following oath:

• • • • •

Then I addressed the elected President, Mr. Leopoldo Ramos Ducós, as follows: In placing this Union under your responsibility, we hope that you will not only guard the Union from destruction, but that you will also exert all your abilities for the advancement of your organization as well as for the improvement of your fellow members.

Then I proceeded as follows:

"I declare this to be a legally installed Board of Directors of Unión de Trabajadores de la Industria Gastronómica, Local 610, working under a Charter granted by the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO."

Appendix D

Immediately after the installation ceremony, the Trustee, Mr. Marcel A. Kenney, turned over to the elected Secretary-Treasurer, Miss Ana del Valle, and to the President, Mr. Leopoldo Ramos Ducós, the bank account of Local 610. The President and the Secretary-Treasurer accepted the documents as correct and signed them. Then, the parties moved to the office of Local 610, at 1476 Ashford Avenue, 3rd Floor, Santurce, Puerto Rico, *where they received from the Trustee, a complete inventory of Local 610,* including books, records, equipment, and files. Copy of inventory signed by the Secretary-Treasurer is attached—Exhibit No. 9.

I wish to point out that valuable technical assistance was received by this Monitor from the Area Office of the Bureau of Labor Management Reports, United States Department of Labor, in connection with the elections and the provisions of the Labor Management Reporting and Disclosure Act of 1959.

The above mentioned report is respectfully submitted to your Honor for your consideration and approval, and for any other action deemed proper.

SAN JUAN, Puerto Rico, this day of June 3rd, 1963.

/s/ ADOLFO D. COLLAZO
Adolfo D. Collazo
Monitor

NOTE:

According to Title IV, Section (f), of Labor Management Reporting and Disclosure Act of 1959, the Monitor turned over to the Secretary of Local 610, Miss Ana del Valle, the credentials of the delegates and all minutes and other records of the convention pertaining to the election of officers.

Appendix D

EXHIBITS

C
O
P
Y

Affilations: AFL-CIO—Canadian Labour Congress—Railway Labor Executives

HOTEL AND RESTAURANT EMPLOYEES
AND BARTENDERS INTERNATIONAL UNION
525 Walnut Street Cincinnati 2, Ohio

Marcel A. Kenney
Vice President, First District
1 Grist Mill Lane
Hyannis, Massachusetts

May 28, 1963

Mr. Adolfo Collazo, Monitor
Dept. Conciliation & Arbitration
San Juan, Puerto Rico

Dear Mr. Collazo,

Be advised that upon the installation of Officers, for Local #610, that was elected, May 26th and installed May 27, 1963 that this terminated the Trustership of Local #610.

Be further advised that all Books, Records, Equipment, Files and Bank Account, has been turned over to the Newly Elected, Sec'y-Treas. Ana Del Valle,

which included a complete inventory and Ana Del Valle sign a Receipt for same, which you have a copy of in your possession. I am.

Respectfully Submitted.

/s/ Marcel A. Kenney
International Trustee

APPENDIX E

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF PUERTO RICO
Civil No. 175-64

LEOPOLDO RAMOS DUCOS,

Petitioner,

vs.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-CIO and Hotel and Restaurant Employees and Bartenders International Union, Local 610 affiliated to the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO,

Respondents.

Petition

To the Honorable Court:

Comes now Petitioner, through his suscribing attorneys and respectfully State, Allege and Pray as follows:

I

This is an action to enjoin respondents from continuing to violate the provisions of the Labor Management Reporting and Disclosure Act of 1959, and specifically Section 101 (5) of the said Act.

Appendix E

II

Jurisdiction of this Honorable Court is invoked under the provisions of Section 102 of Title I of the Labor Management and Disclosure Act of 1959.

III

Petitioner alleges the following causes of action as grounds for the relief hereinafter prayed for:

1. Petitioner in this action is the elected President of respondent union, Hotel and Restaurant Employees and Bartenders International Union, Local 610, hereinafter referred to as Local 610 and a member of such labor organization. Local 610 is affiliated to co-respondent Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, hereinafter referred to as the International.

2. Petitioner has been notified by Mr. Jorge Bartolomei, as Vice President of Local 610, of arbitrary charges filed against him by an individual with no standing to file them. Such charges which do not include non payment of dues, have been filed with the purpose of eliminating Petitioner from the collective bargaining committee in charge of bargaining a collective bargaining agreement with employer, Metropolitan Hotel Association and with the further purpose of eliminating him temporarily from the presidency of Local 610.

3.(a) Petitioner has every reason to expect a suspension in violation of his rights as member of Local 610, in view of the fact that attorney for respondent, the International,

has publicly stated that Petitioner's suspension as President is imminent and furthermore

(b) Article XX (5) of the Constitution of the International provides as follows:

> "Section 5. Suspension Pending Trial. Whenever in the opinion of the General President, charges preferred against any officer of a subordinate body are of sufficient importance to warrant a temporary suspension pending hearing, the General President shall have the right to suspend such officer for a period of sixty (60) days pending the hearing of charges preferred against him. In the event such charges are not sustained against the accused, he shall be reinstated in his office, and paid his salary for all time during which he was under suspension. A subordinate body receiving notice of such suspension shall honor the same forthwith."

Although this provision is illegal, the International has exercised it freely in relation to other members of the Board of Directors of Local 610, in the same manner and fashion, publicly announced by the International, as in the case of Petitioner herein.

Petitioner includes Local 610 as respondent merely in compliance of a legal requisite, being Petitioner's whole interest to protect the interests of such Local 610 and its membership.

Wherefor Petitioner respectfully prays for the following relief:

Issuance of a temporary restraining order enjoining respondents, their officers, agents an all other persons acting

or claiming to act in their behalf and interest, from suspending Petitioner herein, in advance, as publicly stated, and only because certain charges have been filed against him, as aforementioned in this petition, inasmuch as such suspension if carried out would be in violation of his right to a due process of law and of his legal rights under prevailing law.

That this Court grant such other and further relief as it seems just and proper.

Respectfully submitted, San Juan Puerto Rico, this 27th day of April of 1964.

/s/ CARLOS CARRERA BENITEZ
CARLOS CARRERA BENITEZ
Attorney for Leopoldo Ramos Ducós
P. O. Box 21691, University Station
Rio Piedras, Puerto Rico.
Telephone 767-0007

Appendix E

[SAME TITLE]

Order

Petitioner having filed a Petition charging respondents with violation of the provisions of the Labor Management Reporting and Disclosure Act of 1959, and specifically Section 101 (5) of said statute, and

It appearing that good cause has been shown, it is ordered that respondents in the above captioned case, appear before this Court on 7th day of May, 1964, at 9:30 in the morning, to show cause why the temporary restraining order prayed for in the Petition should not issue in the above captioned case.

San Juan, Puerto Rico, this 27 day of April of 1964.

(Signed) CLEMENTE RUIZ NAZARIO
Judge, U.S. District Court for
the District of Puero Rico

Appendix E

[SAME TITLE]

Motion to Dismiss

Comes now respondent Local 610 affiliated to the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, and respectfully shows and prays:

The petition fails to state a claim upon which relief can be granted to Petitioner, for the following reasons:

(a) Petitioner does not allege fine, suspension or expulsion from membership in Local 610 and Section 101 (5) of the Labor Management and Disclosure Act of 1959 does not apply to discipline imposed on officers of unions, but only to membership rights.

(b) Petitioner has not exhausted the administrative procedures provided in the Constitution of the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, which provisions are legal and reasonable and are authorized by Section 101(a)(5) of the Labor and Management Disclosure Act of 1959, 29 USCA 411 (a) (5) and Section 19 of Article XX of said Constitution is a bar to the present action.

(c) Petitioner has no standing to bring the present action and no vested right to his office as President in view of the decision of the United States Court of Appeals for the First Circuit in the case of *Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO et al* v. *Ana del Valle, et al.*, No. 6133, in which petition for rehearing was denied on April 29, 1964.

Wherefore, respondent Local 610 of the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, prays this Court to dismiss the petition in the present case.

San Juan, Puerto Rico, this day May 6, 1964.

PICO & ROSA SILVA
Attorneys for Local 610

BY: ALBERTO PICÓ
(Flo.) Alberto Picó

[SAME TITLE]

Order

This case having come up for rehearing on the Order addressed to the respondents to show cause why the temporary restraining order prayed for in the petition should not issue and the Court being fully advised in the premises, it is hereby ordered as follows:

On March 6, 1964, the United States Court of Appeals for the First Circuit entered judgment in Case No. 6133 of said Court, reversing the order of this Court entered March 22, 1963 in case number 106-63, which judgment as per its certified copy in lieu of mandate received in this Court on May 13, 1964, reads as follows: "Upon consideration whereof, It is now here ordered, adjudged and decreed as

follows: That portion of the order of the District Court appointing a monitor and directing an election is vacated; further proceedings not inconsistent with the opinion filed today." The judgment did not interfere with the order of this Court in so far is it involved the cessation of the trusteeship, to which portion the respondents in said action did not object, in fact they so stipulated.

By motion filed on May 18, 1964 in said Civil No. 106-63, this Court has been advised that a petition for the issuance of a Writ of Certiorari to review the aforesaid decision of the Court of Appeals for the First Circuit will be filed with the Supreme Court of the United States within the period prescribed by law.

I am, therefore, unable at this time, to pass on the respective merits or demerits of the petition filed herein, as regards the injunctive remedy prayed for, until the *nebula* of the petitioner's and of respondent Local 610's status, derived from the election which the impeached monitor supervised, is definitely dispelled.

If such judgment is affirmed by the Supreme Court of the United States, the Officers and the Board of Directors of the Unión de Trabajadores de la Industria Gastronómica de Puerto Rico, Local 610, affiliated to the Hotel Restaurant Employee and Bartenders International Union, AFL-CIO will have been unlawfully holding office and Local 610 would have been inexistent to all legal effects from the same date on which the trusteeship ceased to exist and the elected Board of Directors took office. Thus, it cannot be safely determined, who is lawfully qualified to act for the Union at present. If the Supreme Court of the United States reverses the Court of Appeals decision, then the Board of Directors will have been legally elected and as regards the present action, the issues would have to be viewed in the

light of *Sheridan* v. *United Brotherhood of Carpenters, etc.*, 306 F. 2d. (3 Cir. 1962) 152 and 159, and *Harris* v. *International Longshoremen's Asso. Local 1291* (3 Cir. 1963), 321 F. 2d. 801.

Under the above circumstances the Court stays all proceedings in this case until such time as the Supreme Court of the United States shall have acted upon the petition for a Writ of Certiorari to be filed in connection with case number 6133 of the Court of Appeals.

San Juan, Puerto Rico, May 19, 1964.

(Signed) CLEMENTE RUIZ NAZARIO
CLEMENTE RUIZ NAZARIO
United States District Judge

[SAME TITLE]

Motion

Comes Now Petitioner and respectfully States, Alleges and Prays as follows:

1. This motion is filed to enjoin respondents from continuing to violate the provisions of the Labor Management and Disclosure Act of 1959, 78 *Stat.* 519, 29 U.S.C.A. 401.

2. Jurisdiction of this Honorable Court is invoked under the provisions of said Act, specifically Title I, Section

101(5) and Section 102, 29 U.S.C.A. Section 411(a) (5) and 412.

3. By virtue of Order of May 19, 1964, proceedings in this case have been stayed by this Court until action is taken by the Honorable Supreme Court of the United States in a writ of a certiorari to be filed to the Circuit Court of Appeals for the First Circuit in case Number 6133.

4. On May 21, 1964, Petitioner herein received Notice of Hearing signed by Mr. Jorge Bartolomei as vice president of respondent Local 610, which notice state that Petitioner herein will be submitted to trial on June 4, 1964. Notice of such hearing enclosed herein.

5. Under the circumstances of this case, as they appear from the record, Petitioner herein in no way at all can be protected from arbitrary action nor tried within the safeguards provided by the Act invoked in paragraph 1 above. The reasons for this allegation are as follows:

(a) Mr. Jorge Bartolomei has no legal standing at the present moment to issue nor notify such notice of hearing, which is null and void to all legal effects.

(b) Petitioner has been summoned to appear at the office of Alberto Pico, Esq., who is attorney for the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, parent organization with obvious conflicting interests with its own Local 610, as it appears from the record of Case Number 106-63 before this Honorable Court and Case Number 6133 before the Circuit Court of Appeals for the First Circuit, and also from the record of

the instant case. This fact precludes all possibility of a full and fair hearing.

(c) Petitioner does not have the slightest idea of whom the judge or judges will be, nor of the form or manner in which he or they will be selected. The rules and regulations of Local 610 do not provide for any such method of selection. There is no standing Judging Committee, or any body or any person unlawfully purporting to act in the name of *Local 610* at the present moment, therefore, Respondents are totally precluded from holding any hearing concerning the alleged charges supposedly filed by one Mr. José Carlos Carrión.

5. Respondents' action is in violation of the Regulations and By-laws of Local 610 and in violation of Petitioners rights secured by Section 101 and 102 of the Labor Management Reporting and Disclosure Act of 1959, and unless immediate redress is obtained from this Honorable Court, irreparable injury will be caused to Petitioner herein, who has no other remedy in law available to him.

Wherefore Petitioner respectfully prays for the following relief:

1. Issuance of an order enjoining respondents from holding the hearing set for June 4, 1964, on such date, or on any other date until such time as the above captioned case can be processed on the merits after the events referred to in Order of May 19, 1964, occur, and the issuance of an order to show cause directing respondents to appear before this Honorable Court and show cause why a preliminary injunction and permanent injunction should not be issued restraining respondents from holding such hearing, and from violating Petitioners secured rights under the Act.

Respectfully submitted, in San Juan, Puerto Rico, this 22 day of May of 1964.

(Signed) CARLOS CARRERA BENITEZ
Carlos Carrera Benitez
Attorney for Leopoldo Ramos Ducós
P. O. Box 21691, University Station
Rio Piedras, Puerto Rico
Telephone 767-0007

[SAME TITLE]

Return of Local 610

Comes now Respondent Local 610 affiliated to the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO and respectfully prays:

1) The court has issued an order dated May 22, 1964 providing that this respondent show cause why the preliminary injunction and other relief prayed for in Petitioner's motion of that same date should not be granted.

2) The said preliminary injunction and/or permanent injunction or any other relief should not be granted for the following reasons:

(a) This court has no jurisdiction or authority under the Labor Management Reporting and Disclosure Act of 1959 to entertain this action since the Act does not apply to the right to hold office in a Labor Union:

(b) Petitioner has no cause of action because he has failed to exhaust the administrative procedures provided in the Constitution of the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO. From the face of the motion filed by Petitioner, it appears that trial of the charges against him has not been held; this Respondent offers to show that an appeal from any decision in such trial would be available to the Joint Executive Board or to the General President of the International Union; that a further appeal can also be had to the General Executive Board and a subsequent appeal to the Convention of the International Union. These remedies must be exhausted before Petitioner can resort to this or any other court, by virtue of the provisions of Section 19 of Article XX of the Constitution of the International Union which provides:

> "Section 19. Obligation to Exhaust Remedies. Every member or affiliate of the International Union feeling aggrieved by any action taken or failure to act by the International Union, its officers, or any subordinate affiliate of the International Union, or the officers or members thereof, with respect to any matter or thing relating to or affecting the affairs of such International Union or affiliate or with respect to the trial of charges or appeals therefrom, shall be required to exhaust all remedies of appeal and protest permitted such member or affiliate under the terms of this Constitution before resorting to any court or other tribunal."

The restrictions contained in this Section are authorized by Section 101(a) (5) of the Labor Management Reporting and Disclosure Act of 1959, 29 USCA 411(a) (5).

3) Petitioner has been suspended for a period of sixty (60) days pending the hearing of charges proferred against him as provided in Act XX Section 3 of the Constitution of the International which is copied in parragraph III (3) (b) of the original petition of April 27, 1964. This respondent informs the court that the aforesaid period of sixty (60) days shall terminate on June 23, 1964. If this court enjoins the trial as prayed for in the Motion, such order may give rise to a claim by Petitioner that he is entitled to the office of President after the suspension is terminated. Such order would in effect grant Petitioner the remedies to which this court has held that he is not now entitled.

4) The holding of the trial of June 4, 1964 will cause Petitioner no irreparable damage since he can obtain review of any decision as set forth above and he is free to seek relief in this or any other proceedings to which he may be entitled.

Wherefore the Respondent Local 610 prays this court to deny the motion filed by Petitioner in this case.

San Juan, Puerto Rico, this day 28 day of May, 1964.

PICO & ROSA SILVA
Attorneys for Local 610

BY: (Signed) ALBERTO PICÓ
Alberto Picó

Appendix E

[SAME TITLE]

Order

Petitioner having filed a Motion charging respondents with further violation of the provisions of the Labor Management Reporting and Disclosure Act of 1959, and specifically Section 101(a) (1), (2) and (5) of Title I of said statute, and

It appearing that good cause has been shown, it is ordered that respondents in the above captioned case, appear before this Court on 27th day of May, 1964, at 10:00 in the morning, to show cause why the preliminary injunction and the other relief prayed for in the Motion should not issue in the above captioned case.

San Juan Puerto Rico, this 22 day of May, 1964.

(Signed) CLEMENTE RUIZ NAZARIO[1]
Judge, U.S. District Court for
the District of Puerto Rico

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[1] The Motion referred to in the above order, printed at pp. 50-53, *supra*, was denied in open Court on May 27, 1964.

Office-Supreme Court, U.S.
FILED
SEP 21 1964
JOHN F. DAVIS, CLERK

No. 305

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1964.

ANA DEL VALLE, ET AL.,
Petitioners,

vs.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-CIO AND MARCEL A. KENNEY, TRUSTEE,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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STATUTES INVOLVED

Labor Management Reporting and Disclosure Act of 1959, P. L. 86-257 Sept. 14, 1959, 73 Stat. 519 et seq. 29 U.S.C. 401, et seq.

Section 304 (29 U.S.C. 464)

(a) Upon the written complaint of any member or subordinate body of a labor organization alleging that such organization has violated the provisions of this title (except section 301) the Secretary shall investigate the complaint and if the Secretary finds probable cause to believe that such violation has occurred and has not been remedied he shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate. Any member or subordinate body of a labor organization affected by any violation of this title (except section 301) may bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate.

(b) For the purpose of actions under this section, district courts of the United States shall be deemed to have jurisdiction of a labor organization (1) in the district in which the principal office of such labor organization is located, or (2) in any district in which its duly authorized officers or agents are engaged in conducting the affairs of the trusteeship.

(c) In any proceeding pursuant to this section a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution or bylaws shall

be presumed valid for a period of eighteen months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 302. After the expiration of eighteen months the trusteeship shall be presumed invalid in any such proceeding and its discontinuance shall be decreed unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under section 302. In the latter event the court may dismiss the complaint or retain jurisdiction of the cause on such conditions and for such period as it deems appropriate.

Section 306 (29 U.S.C. 466)

The rights and remedies provided by this title shall be in addition to any and all other rights and remedies at law or in equity: *Provided,* That upon the filing of a complaint by the Secretary the jurisdiction of the district court over such trusteeship shall be exclusive and the final judgment shall be res judicata.

In the

Supreme Court of the United States

October Term, 1964.

No. 305

ANA DEL VALLE, ET AL.,
Petitioners,

vs.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-CIO AND MARCEL A. KENNEY, TRUSTEE,
Respondents.

BRIEF TO THE UNITED STATES SUPREME COURT

STATEMENT OF THE CASE

The facts in the instant case are largely uncontroverted. However, since petitioners have omitted some essential details, a brief restatement of the case is necessary.

On March 14, 1963, petitioners, purporting to be some one hundred and fifty-five (155) members in good standing of Local 610 of the Hotel and Restaurant Employees and Bartenders International Union, filed a petition against respondents in the District Court for the District of Puerto Rico to terminate the trusteeship of Local 610 which had existed for more than eighteen months.

Petitioners invoked the jurisdiction of the District Court under Title III, Secs. 304 and 306[1] of the Labor Management Reporting and Disclosure Act, hereinafter referred to as LMRDA (Petition paragraph II, (Rr[2] p. 1a). The petition contained, *inter alia*, the bare legal conclusion that the trusteeship was maintained "in violation of the constitution and by-laws of the International as well as in violation of the provisions of Sections 304 and 306."

Among other relief, the petitioners requested the appointment of a monitor to receive the assets and administer the affairs of Local 610.

At the time of the filing of the petition, an ex parte order was obtained directing the respondents to appear before the Court on the 20th day of March, 1963, "to show cause why the temporary restraining order prayed for in the petition should not be issued . . ." (Rr p. 9a). At the direction of the Court, the cause was continued to March 21, 1963, at which time respondents appeared as directed by the order to show cause.

At the hearing, the respondents announced that the trusteeship was being terminated and that the respondent International Union was proceeding to have the trustee conduct an election of officers in accordance with its constitution. The petitioners objected to the fact that the trustee would conduct the election, and considerable argument on the authority of the court followed in which the court attempted to have the parties stipulate a consent order. When respondents declined to enter into the type of stipulation suggested, the court summarily advised respondents that since no "answer" or "return" had been filed to the order to show cause, the court would presume the allegations of the petition to be true, and would enter

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[1] 29 USC 464 and 466.

[2] Respondents Additional Record, filed herewith. Reference to record printed by petitioner is designated "Pr."

an order without requiring presentation of any evidence by petitioners (Rr p. 28a). At the same time the court refused respondents any opportunity to present evidence (Rr p. 27a, 29a).

On the following day, March 22, 1963, the Court entered an order appointing a monitor "to conduct and supervise the election of officers of Local 610 and to supervise the cessation of the trusteeship." (Rr p. 33a). Contrary to the assertion of the petitioners, the respondents objected to the order, and specifically challenged the authority of the Court to appoint a monitor, which objection was noted on the face of the order as follows:

> "This order is entered despite the fact that respondents have objected to it for the following reasons: (1) The order is beyond the scope of the show cause order entered by the Court and beyond the relief requested by the complainant; (2) The Court does not have jurisdiction or authority to order the appointment of a monitor under the provisions of the law upon which the complaint was filed, and for such other reasons as were raised in open court." (Rr p. 33a)

Respondents thereafter requested that petitioners be required to post an injunction bond which the Court ordered on March 26, 1963 (Rr p. 34a). On May 1, 1963, respondents made application to increase said bond which was denied (Rr p. 37a, 38a).

Notice of Appeal from the aforementioned order of March 22 was filed on April 11, 1963, and the appeal was heard on February 3, 1964. During the pendency of the appeal respondent complied with the directions and intent of the order of the District Court by: obeying the orders of the monitor in the conduct of the election of May 26, 1963 (while objecting to his ruling on voting eligibility (Pr 32, 44)); by installing the officers so elected;

and by turning over the affairs of the local union to said officers. At the time of the appeal below, the officers elected pursuant to the court order were continuing to act.

On March 6, 1964, the Court of Appeals issued an opinion and decision (Pr p. 23) setting aside that portion of the District Court's order which appointed a monitor to conduct the election of union officers. Although the Court indicated but did not rule directly that the District Court did not have authority to appoint a monitor in trusteeship cases, (opinion, fn. 2, Pr. p. 23), it did hold that such an appointment was not automatic. The Court found as a matter of fact that the "record disclosed no special reason for the appointment of a monitor," that no such reason was alleged, and that the District Court had proceeded on the basis that the burden was on respondents to show the contrary.

ARGUMENTS

Petitioner has raised and argued five "questions presented" to which respondents herewith reply.

1. Petitioners' Question I suggests that the decision of the First Circuit is in direct conflict with decisions of other Circuits. Petitioners ingeniously reason that when the Court of Appeals set aside the order appointing the monitor, thereby nullifying the election conducted by him, it assumed to act in a union election matter in a manner contrary to the procedure provided under Title IV, Sec. 402[3] of the LMRDA. This objection to the exercise of the Court's appellate jurisdiction is without merit. The Court was not interfering in any election, it

[3] 29 U.S.C. Sec. 482.

was correcting the interference of the District Court, the same error of which petitioners now complain.

The cases cited by petitioners as "conflicting"[4] hold that only Sec. 402 confers authority on U. S. District Courts to deal with union elections, and then only upon complaint by the Secretary of Labor. The instant decision refusing to permit the District Court to interfere in an election on complaint of individual union members under Secs. 304 and 306 is, therefore, in accord, and not conflicting.

2. Questions II and III relate to the question of mootness. Petitioners' motion on the matter of mootness does not suggest any recent change of the status of the case. Rather, it appears that the purpose of the motion is to introduce evidence in this court which petitioners failed to present to the court below,[5] and which should not now be considered by this Court. *Edward Hine Yellow Pine Trustees* v. *Martin*, 268 U.S. 458; *Roemer* v. *Simon*, 91 U.S. 149.

In essence, petitioners urge that the Court of Appeals erred in not finding the controversy presented to it to be moot. Review of this alleged error is hardly a matter of concern to this court in exercising its certiorari jurisdiction. It does not involve a conflict of decisions of the Court of Appeals; it is not an important question of federal law which should be decided by the Court, and is not a federal question in conflict with the decisions of the Court. Mootness is scarcely a question for a petitioner

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[4] *Mamula* v. *United Steel Workers*, 304 F. 2d 108 (CA 3, 1962) cert. denied, 371 U.S. 823; *Colpo* v. *Highway Truck Drivers and Helpers, Local* 107, 201 F. Supp. 307 (D.C. Del. 1961) vacated as moot 305 F. 2d 362 (CA 3, 1962), cert. denied, 371 U.S. 890 (1962); *Robins* v. *Barback*, 325 F. 2d 929 (CA 2, 1963).

[5] This evidence consists of documents dated June 3, 1963, to October 18, 1963, which could have presented to the Court of Appeals in ample time for the oral argument in that Court on Feb. 3, 1964.

to raise since if a case is moot, this court should not take the futile act of granting certiorari. Mootness is, therefore, a defense against the granting of certiorari, not an affirmative argument in favor of its grant.

Furthermore the facts show that the Court of Appeals below did not depart from the accepted and usual course of judicial proceedings so as to call for an exercise of this court's power of supervision. The respondents were confronted with an injunctive order directing the appointment of a monitor to conduct and supervise an election of officers. Respondents excepted to this order, insisted upon an injunction bond, and filed timely notice of appeal. While the appeal was pending, respondents were required to comply with the order by turning over the administration of the local union to those persons elected in the monitor-conducted election to which respondents objected. At the time of the appeal, the persons so elected were continuing to act as officers of the Union and now continue so to act.[6] Accordingly there was and is a case and controversy. Certainly mere obedience to a contested court order, like compliance with contested violations of law, does not render the contested matter moot. cf: *Walling* v. *Helmerich & Payne*, 323 U.S. 37, 42, 43; *Federal Trade Commission* v. *Goodyear Tire & Rubber Company*, 304 U.S. 257; *Curcio* v. *The United States*, 354 U.S. 118.

3. Question IV seeks to raise the issue of the authority of District Courts to appoint a monitor to direct and supervise elections under Title III (Trusteeships) of the LMRDA. The decision of the Court of Appeals, however, does not give rise to this issue. The Court found as a matter of *fact* as follows:

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[6] The District Court stayed execution of the judgment of Court of Appeals pending outcome of the instant petition. (Pr. p. 20)

> "While monitorships may be an acceptable, equitable device . . . the record discloses no special reasons for invoking that relief here. Indeed none are even alleged. The court seems to have proceeded on the basis that the burden was upon respondent to show the contrary." (Pr. p. 23).

The decision therefore rests on a finding of fact that the record discloses no special reason for the appointment of a monitor. Since no evidence whatsoever was presented to the District Court (Rr p. 10a - 32a), this finding is beyond dispute, and is certainly not a matter to which the court will address itself in exercising its discretionary jurisdiction. *General Talking Pictures Corp.* v. *Western Electric,* 304 U.S. 175; *United States* v. *Johnson,* 268 U.S. 220.

Even if the authority to appoint a monitor is raised by the decision below, the lack of such authority is so clear, and the circumstances of the instant cause so unusual, that this court should not be required to speak on the matter. In the statutory scheme of the LMRDA it is clear that in actions under Title III, Secs. 304 and 306 of the Act, the District Court may only grant such relief as is appropriate to correct the violation of that title, and to decree termination of trusteeships. All authority of District Courts over union elections is contained in Title IV of the Act which, in contrast to Title III, specifically grants to the court detailed authority regarding the election of union officers.

Under Section 402 (c)[7] of Title IV. District Courts at the request of the Secretary of Labor, have authority to preserve assets of the union to declare elections void and to direct new elections under supervision of the Secretary of Labor. The statute and its legislative history make it clear, however, that Congress intended to limit the exer-

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[7] 29 U.S.C. Sec. 482 (c).

cise of this authority to the correction of elections already conducted[8] and only when requested to act by the Secretary of Labor.[9] Nothing in the legislative history suggests that the rule be any different merely because the elections are in connection with the dissolution of a trusteeship. The detailed authority to deal with election matters under Title IV and the absence of any such authority under Title III invokes the rule of statutory construction: *expressio unius est exclusio alterius. Ginsberg & Sons* v. *Popkins*, 285 U.S. 204, 208.

In the instant case the errors of the District Court were crystal clear. It acted in an initial election where no violation of the election provisions of the Act were claimed, it acted at the instance of individual union members rather than the Secretary of Labor, and it directed an election under the supervision of a monitor rather than the Secretary of Labor. The errors occurred under circumstances

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[8] The Senate Report on S. 1555 which contained the exact provision finally enacted as Sec. 402, stated as follows:

> "In filing a complaint the member must show that he has pursued any remedies available to him within the union and any parent body in a timely manner. This rule preserves a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections." (Senate Report 187, 86th Congress First Session, p. 21; Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, Volume I, page 417.)

[9] Under H.R. 8342 as originally passed by the House, individual union members were given rights to enforce the election provisions of the Act. In conference this provision was removed, and the Senate version substituted. In reporting back to the Senate, Senator Kennedy stated:

> "The provisions requiring fair and periodic elections are taken from the Senate bill. The Landrum-Griffin Bill would have substituted a variety of suits by individual members for enforcement by the Secretary of Labor. The House conferees receded from this position and the Senate provision was restored." (Congressional Record, Senate, Sept. 3, 1959, page 16415; Legislative History of the Labor-Management Reporting & Disclosure Act of 1959, Volume II, page 1433).

The Circuit Courts are in agreement. See footnote 4 *supra*.

which are not likely to reoccur with any frequency, and they have now been corrected by the Court of Appeals. Under these circumstances further review by this court is neither required nor justified.

4. The final question of petitioners deals with the right of the Court of Appeals to review the interlocutory order in question. The Court found that the order was in "substantial effect" an injunction (Pr. p. 23). The District Court obviously was of the same opinion since it required petitioners to post an injunction bond pursuant to Rule 65 (c) of the Rules of Federal Procedure (Rr p. 34a). The Court having so found, its authority to exercise appellate jurisdiction is specifically conferred by 28 USC Sec. 1292 (1).

For all the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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